

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Knoxville February 25, 2009

DARYL MADDEN v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 98-A-627 Cheryl Blackburn, Judge

No. M2008-01630-CCA-R3-HC - Filed June 17, 2009

The Petitioner, Daryl Madden, appeals pro se the denial of habeas corpus relief in the Criminal Court for Davidson County from his convictions for first degree felony murder; second degree murder, a Class A felony; and especially aggravated robbery, a Class A felony. The trial court merged the two murder convictions and imposed consecutive sentences of life and twenty-five years. The Petitioner contends (1) that the trial court abused its discretion in denying relief, (2) that the trial court abused its discretion in not admitting the medical records he requested, (3) that trial counsel was ineffective in not obtaining the report of the arresting officer and the medical records, and (4) that the trial court erroneously excluded the tape of the preliminary hearing from the trial evidence such that the jury was not able to hear another judge's statement that the Petitioner should not have been arrested. We affirm the denial of relief.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Daryl Madden, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Thomas Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

This case arises from the Petitioner and a co-defendant's robbing and fatally kicking the victim outside a bar. At a joint trial, the jury convicted the Petitioner of first degree felony murder, second degree murder, and especially aggravated robbery. The trial court merged the murder convictions. This court affirmed the Petitioner's convictions, and the Tennessee Supreme Court denied review. State v. Madden, 99 S.W.3d 127 (Tenn. Crim. App. 2002), app. denied (Tenn. Dec. 9, 2002). The Petitioner sought and was denied post-conviction relief. This court affirmed the

denial, and the Tennessee Supreme Court denied review in October 2005. Daryl Lee Madden v. State, No. M2004-00755-CCA-R3-PC, Davidson County, slip op. (Tenn. Crim. App. May 13, 2005), app. denied (Tenn. Oct. 31, 2005).

The Petitioner filed a pro se petition claiming initially that his imprisonment resulted from the State's knowing use of perjured testimony and that evidence favorable to him was improperly suppressed. He claimed that the trial court and prosecution improperly withheld the victim's hospital records that would show the victim's initial injuries and those that developed later while he was at the hospital, as well as preliminary hearing testimony that the Petitioner did not cause the injuries that led to the victim's death. He alleged that someone else wore the boots used in the fatal attack. He also claimed that he was convicted of first degree premeditated and felony murder and that the trial court improperly changed the verdict to second degree murder. He contended that trial counsel was ineffective for not using the hospital reports, calling Lisa White, the witness the Petitioner wanted, as a witness and not impeaching Lisa White and "vacating questions." He asserted that he was denied due process when the stenographer recorded over the tapes of his trial.

The trial court denied relief without a hearing after concluding that the Petitioner failed to establish a cognizable basis for habeas corpus relief. The trial court found that the Petitioner's claims would render his judgments voidable, not void. It also found that the jury convicted him of second degree murder and that the trial court merged this conviction with the felony murder conviction. The trial court stated that because the Petitioner had already pursued and been denied post-conviction relief, the trial court could not consider the claims raised in the habeas corpus petition as claims for post-conviction relief.

On appeal, the Petitioner contends (1) that the trial court abused its discretion in denying relief, (2) that the trial court abused its discretion in not admitting the medical records he requested, (3) that trial counsel was ineffective in not obtaining the report of the arresting officer and the medical records, and (4) that the trial court erroneously excluded the tape of the preliminary hearing from the trial evidence such that the jury was not able to hear another judge's statement in the preliminary hearing that the Petitioner should not have been arrested.

The State responds that the trial court did not abuse its discretion in denying habeas corpus relief in view of the Petitioner's failure to show that his judgments are void or that his sentence has expired. The State also asserts that the trial court correctly determined it could not treat the petition for habeas corpus as a petition for post-conviction relief.

The determination of whether habeas corpus relief should be granted is a question of law which we review de novo on appeal. Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2001). Habeas corpus relief will be granted when the Petitioner can show that a judgment is void, not merely voidable. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). To this end, a writ of habeas corpus is granted only "when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (citing

Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993)). The burden is on the Petitioner to establish by a preponderance of the evidence that the judgment is void or that a sentence has expired. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000); State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291-92 (1964). If the Petitioner carries this burden, he is entitled to immediate release relative to that judgment. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). However, the trial court may dismiss a petition for writ of habeas corpus without an evidentiary hearing and without appointing a lawyer when the petition does not state a cognizable claim for relief. Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004); State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636-37 (1967); see also T.C.A. § 29-21-109 (2000).

The trial court properly dismissed the petition after determining that the petition did not state a cognizable claim for habeas corpus relief. The Petitioner has not shown either that the trial court lacked jurisdiction to impose the sentences or that his life-plus-twenty-five-year effective sentence has expired. The Petitioner's remaining issues, concerning the admission of evidence and alleged ineffective assistance of counsel, would, if proven, render his judgments voidable and not void. See Summers v. State, 212 S.W.3d 251, 255-256 (Tenn. 2007) (stating that a "voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity," while a "void judgment is one that is facially invalid because the court did not have the statutory authority to render such judgment"). Because the Petitioner has not met his burden to show the judgment or the record of the proceedings reflects either an illegal sentence or detention beyond the duration of his sentence, he is not entitled to relief.

The trial court also properly concluded that it could not consider the Petitioner's habeas corpus petition as a petition for post-conviction relief pursuant to Tennessee Code Annotated section 40-30-105(c) (2006). The trial court noted that the Petitioner had one post-conviction petition adjudicated on the merits as contemplated by section 40-30-102(c) (2006), such that a court must dismiss a subsequent petition. The Petitioner is not entitled to relief.

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE